

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

TYRONE FURGESON and MYONG  
FURGESON, husband and wife; MYONG &  
SUNG, LLC, a Washington limited liability  
company d/b/a THE BROWNE'S STAR  
GRILL; and CONSTITUTIONALIST  
SERVICES, LLC, a Washington limited  
liability company d/b/a ESYONGS SECURITY  
AND CANINE,

Plaintiffs,

v.

CITY OF TACOMA, a municipal corporation;  
GREG HOPKINS and "JANE DOE"  
HOPKINS, husband and wife, and the marital  
community thereof; ROBERT LUKE and  
PEGGY CAMPOS-LUKE, husband and wife,  
and the marital community thereof; PHIL  
FERRELL and DEBBIE FERRELL, husband  
and wife, and the marital community thereof;  
NICK STEPHENS and BOBBIE STEPHENS,  
husband and wife, and the marital community  
thereof; RUBEN CARTER and DARLENE  
CARTER, husband and wife, and the marital  
community thereof; DUANE KNOLL and  
ROXANN KNOLL, husband and wife, and the  
marital community thereof; and BRIAN  
TRUNK and "JANE DOE" TRUNK, husband  
and wife, and the marital community thereof,

Defendants.

Case No. C05-5490FDB

ORDER GRANTING IN PART  
DEFENDANTS' MOTION FOR  
SUMMARY JUDGMENT ON STATE  
CLAIMS and DECLINING TO  
EXERCISE SUPPLEMENTAL  
JURISDICTION ON TWO CLAIMS

This cause of action arises from a July 25, 2002 inspection of the Browne's Star Grill  
building by a building inspector from the City's Building and Land Use Services Department, a fire

1 inspector from the Tacoma Fire Department, and an electrical inspector from Tacoma Power.  
2 Plaintiff Tyrone Furgeson allowed the inspection, stating, "Be my guest." (Ex. 1, p. 142.) Following  
3 the inspection, the team concluded that the hazards were such that abatement was the appropriate  
4 action and cut electrical power to the building and a "Do Not Occupy" notice was posted on the bar  
5 and grill on the same day, July 25, 2002. The necessary repairs were made by Plaintiffs and,  
6 following re-inspections by the City, Browne's Star Grill reopened on September 6, 2002.

7 The Court has previously ruled on Defendants' Federal claims pursuant to 42 U.S.C. § 1983  
8 and 1985 and the United States Constitution (See orders entered November 15 and 17, 2006).  
9 Plaintiffs' Complaint alleges several causes of action under state law, including, in part, state  
10 constitutional violations, and various tort claims (outrage, commercial disparagement, trespass, e.g.).  
11 Defendants move for summary judgment on these claims as well.

12 Although the Court has jurisdiction over Plaintiffs' state-law claims pursuant to 28 U.S.C. §  
13 1367(a), under 28 U.S.C. § 1367(c)(3), a district court may decline to exercise supplemental  
14 jurisdiction over state-law claims where the court has dismissed all claims over which it has original  
15 jurisdiction. *Voigt v. Savell*, 70 F.3d 1552, 1565 (9<sup>th</sup> Cir. 1995).


16 In view of the Court's determination on the Federal claims, any allegation under state  
17 constitutional law that arises from the same factual basis as the Federal constitutional claims is  
18 lacking in merit; hence, Plaintiffs' due process claims and takings claim as well as the right to  
19 peaceably assemble and the trespass claim must be dismissed. The tort of outrage also will be  
20 dismissed, as the Court can find no basis for concluding that there was conduct "so outrageous in  
21 character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be  
22 regarded as atrocious, and utterly intolerable in a civilized community." *Birklid v. Boeing Co.*, 127  
23 Wn.2d 853, 868, 904 P.2d 278 (1995). The Court declines to exercise supplemental jurisdiction as  
24 to the remaining claims (intentional interference with Plaintiffs' business expectancies and  
25 commercial disparagement).

1 ACCORDINGLY, IT IS ORDERED:

2 (1) Defendants' Motion for Summary Judgment on Plaintiffs' state law claims [Dkt. # 36] is  
3 GRANTED in part as follows: Plaintiffs' claims under the Washington State Constitution are  
4 DISMISSED in their entirety with prejudice; Plaintiffs' claims for the torts of outrage and trespass  
5 are DISMISSED with prejudice;

6 (2) The Court declines to exercise supplemental jurisdiction over the remaining state claims  
7 (intentional interference with Plaintiffs' business expectancies and commercial disparagement) and  
8 they are DISMISSED.

9 DATED this 21<sup>st</sup> day of November, 2006.

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12 FRANKLIN D. BURGESS  
13 UNITED STATES DISTRICT JUDGE  
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